

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 95-25**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of the sales and use tax to materials to be used for construction of building project for [THE TAXPAYER] Church.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

FACTS

The taxpayer has determined to engage in a building project which will consist of three elements. First, there will be construction of a two story addition built onto the west side of the existing church building. This addition will house Sunday School classrooms and two office spaces. Second, at the south end of the church there will be constructed a

three-story “connector” which will house two Sunday School classrooms, a stairway, and an elevator. The primary purpose of the “connector” is to provide a space for the elevator and stairway which will connect the three floors of the existing building. Third, a portion of the existing space will be renovated and a covered drop off will be constructed on the north end of the building. Finally, the project will also involve the demolition of a residential structure located on the church property. The structure is located approximately forty feet from the existing church building and must be removed to make room for the above-mentioned additions. The residential structure is currently used for Sunday School classes.

To the extent possible, the church will purchase all construction materials necessary for the project and furnish them to the contractor engaged for the construction.

ISSUE

Whether the materials used for the construction will be subject to sales or use tax.

RULING

Materials used in the construction, if purchased and owned by the church, will be exempt from sales and use tax.

ANALYSIS

Materials used by a contractor for the construction of real property are subject to sales or use tax unless exempted by law.

T.C.A. Section 67-6-322 provides that a church may purchase tangible personal property without the payment of sales tax provided that the church has had issued to it a certificate of exemption by the commissioner of revenue as contemplated by T.C.A. Section 67-6-322(e).

Further, T.C.A. Section 67-6-209(b) provides that a contractor may use such materials for church construction without the payment of use tax on the materials:

Where a contractor or subcontractor hereinafter defined as a dealer uses tangible personal property in the performance of the contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the title holder of such property would be subject to pay the sales or use tax, except where the title holder is a church, private nonprofit college or university and the tangible personal property is for

church, private nonprofit college or university construction, such contractor or subcontractor shall pay a tax at the rate prescribed by § 67-6-203 measured by the purchase price of such property, unless such property has been previously subjected to a sales or use tax, and the tax due thereon has been paid. The exemption provided for herein for private nonprofit colleges or universities shall apply only to the state portion of the sales tax.

T.C.A. Section 67-6-209(b)(emphasis added).

Under the facts presented the construction contemplated consists of additions to the church building itself and would be considered "church construction" as that phrase is used in the cited exemption. Therefore, any materials which the church purchases and to which it takes title may be used by the contractor for church construction as described above without the payment of sales or use tax.

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APPROVED: Ruth E. Johnson

DATE: 7/7/95

